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SUBJECT: ASSISTANT SECRETARY CARSON DISCUSSES POLITICAL SITUATION,
ELECTORAL REFORM WITH POLITICAL LEADERS

REF: ABUJA 0161

CLASSIFIED BY: James P. McNulty, Political Counselor, U.S. Embassy
Abuja, Political Section; REASON: 1.4(B), (D)

SUMMARY

¶1. (C) Assistant Secretary of State for African Affairs Johnnie Carson engaged in a lively dialogue February 10 on Nigeria's leadership crisis, elections, and electoral reform with Kwara Governor and Governors' Forum Chairperson Bukola Saraki, former Senate President Ken Nnamani (now Chairperson of the Abuja-based Ken Nnamani Centre for Leadership and Development), and former Sokoto Governor and opposition Democratic People's Party (DPP) Presidential Candidate Attahiru Bafarawa. All agreed that the non-binding resolutions passed by the Senate and House of Representatives February 9, while not definitively resolving the succession process, had moved forward the necessary presidential transition. The group clashed over whether changing the leadership of the Independent National Election Commission (INEC) or giving it permanent financial autonomy remained the key to conducting credible elections in 2011. The group also realized that the country is not "out of the woods" yet, given that Jonathan is now the sole executive of the nation. They recognized that this is the next issue the National Assembly will need to address if the Acting President travels outside Nigeria. (Meanwhile, the Federal Executive Council failed again February 17 to vote in support of declaring Yar'Adua incapacitated -- see septel.) The Ambassador, DCM, and PolCouns (notetaker) also attended this wide-ranging political dialogue. END SUMMARY.

NO SIGN OF YAR'ADUA

¶2. (C) Former Sokoto Governor Bafarawa, noting that he had just returned from a visit to Saudi Arabia, remarked that a delegation of five Senators visiting Jeddah, Saudi Arabia, had failed to see hospitalized President Yar'Adua either February 9 or 10. He predicted that the delegation would never see Yar'Adua, as only

First Lady Turai Yar'Adua and the President's Chief of Security had seen the ailing leader since late November. He denied a press report that the President's mother had traveled to Saudi Arabia. Bafarawa expressed concern that Acting President Goodluck Jonathan had no deputy yet, leaving the country in the precarious situation of having only one chief executive.

YAR'ADUA OR FEC MUST FOLLOW UP RESOLUTION

13. (C) Former Senate President Ken Nnamani of the ruling People's Democratic Party (PDP) said the resolutions were the right thing to do to settle down the country. He did, however, predict litigation against the resolutions, because they lacked force of law and that Article 145 had specifically required the transmittal of a "written declaration" by the President to the Senate President and House Leader formally handing over power to his deputy as Acting President. In practice, he added, such a declaration should not only bear the President's signature but the seal of his office. Absent either or both these features, the National Assembly could not read such documents into their "votes and proceedings" and would therefore return them to the Presidential Villa for correction. He expressed doubt over the validity of using a

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transcript from Yar'Adua's January 12 BBC interview (as had done the Senate) as a substitute for such a written declaration.

14. (C) Nnamadi acknowledged, however, that National Assembly members had acted in good faith in attempting to initiate the process of naming Vice President Jonathan as President and need to be given credit for trying to find a democratic solution to a difficult political problem. He advocated keeping the process "tidy" and more in line with the Constitution. Nnamadi declared that, to provide legitimacy for both resolutions, either President Yar'Adua would need to resign or the Federal Executive Council (FEC) would need to initiate proceedings to declare the President as incapacitated. (Some members tried to do this at the February 17 FEC meeting, but such action was voted down.) To do the latter, he explained, two-thirds of the FEC members would need to approve a request to the Senate President and House Speaker seeking appointment of a five-person medical panel, including the president's physician, to ascertain the President's health. Nnamani did not advocate seeking impeachment under Article 143, as some have advocated, because he considered such action as overly "punitive" for an illness that was not of the President's making.

15. (C) On the other hand, Bafarawa advocated for seeking a declaration of the President's incapacity under Article 144. He wondered why the President, who reportedly signed a supplemental appropriations bill, could not sign a letter handing over power to his deputy as Acting President. While ridiculing the idea of "pulling" such a declaration from the Internet, he remarked that Nigeria would not achieve progress if the country had to wait for its leaders to get everything right.

16. (C) Governor Saraki of the ruling PDP, who also served as Chair of the powerful Governors' Forum, praised the resolutions as going a long way towards resolving the succession crisis and expressed agreement with the National Assembly's action. He opined that the Constitution had not foreseen the situation where a President had left the country for medical treatment and was no longer in a position to transmit a letter to hand over presidential power.

Saraki described the current situation as "fluid" but not a "U-turn" for democracy. While not a perfect solution from a legal viewpoint, he considered approval of the resolutions as justified by the doctrine of necessity. Political leaders, he continued, will need to review the situation again. In his view, FEC members would need to show the will to decide for a declaration of incapacity. After all, he noted, President Yar'Adua, in his opinion, did not come across as a person who wanted to hold indefinitely on to power. Yar'Adua, he concluded, would either have to transmit a letter to hand over power, return home to resume duties, or allow the country to move on, which the resolutions to some extent help achieve.

17. (C) During the last several weeks, Saraki said, the political system in Nigeria had demonstrated some maturity in the use of checks and balances, with civil society, political leaders, and elders all calling for Yar'Adua to hand over presidential power. He noted that FEC members had just voted unanimously to support the National Assembly resolutions designating Vice President Jonathan as Acting President. Bafarawa interjected that such support was not enough, as the FEC had a constitutional role to play. Saraki advocated giving the FEC and National Assembly the benefit of the doubt in recognizing the President's medical incapacity.

18. (C) Bafarawa insisted that the FEC and National Assembly should send a medical panel to Saudi Arabia to check on the President's health. Nnamadi noted that such action would require assent by two-thirds of the 42-person FEC, which he doubted FEC members would have the courage to do. Saraki agreed that the FEC would not seek to declare the President as "medically unfit." He argued that a person could suffer from a severe medical condition, such as

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pneumonia, but not be mentally incapacitated. Bafarawa disagreed, insisting that no one has seen the President for nearly three months, hindering government decision-making. He advocated making the President's medical records accessible to the public to counter the current tendency to manipulate and hide such information. Nnamani agreed that senior leaders should be able to consult daily with the President.

19. (C) Nnamani attributed Nigeria's democratic shortcomings to the lack of genuine opposition in the country. The PDP controlled all but eight governorships. Even with the multiplicity of parties, he said, no one respected or heeded them until election time, when running for office. Saraki noted lack of strong political parties as a problem with all developing nations and democracies, insisting that Nigeria had improved considerably since the end of military rule in 1999.

USE OF EFCC TO TARGET OPPOSITION

110. (C) Bafarawa praised Nnamani for his role in blocking a bid for a third term by then President Olusegun Obasanjo. He cited the former Senate Leader as an example of a courageous political leader who had stood up to the leaders of his own party. Bafarawa decried deficiencies in the rule of law in Nigeria, citing his own tussles during the past two years with the Economic and Financial Crimes Commission (EFCC). Bafarawa noted that he had left a surplus of 11.8-billion naira in state coffers when he departed the Sokoto governorship in 2007. EFCC officials, he said, waited more than a year before calling him in for questioning over alleged

embezzlement of such funds. EFCC investigators detained him for a few days and withheld his passport, but without filing charges. He eventually gained release as well as a court order to return his passport. Last December, EFCC officials again detained him, this time during a meeting at the Sheraton Hotel in Abuja with other opposition leaders to discuss establishment of a "mega" party. A federal judge in Abuja ordered his release on bail, but EFCC officials transported him promptly to Sokoto, in the middle of a strike by local judicial workers, where a different judge ordered him imprisoned. He ultimately gained his release after more than one week in prison.

INEC ROLE IN CONDUCTING ELECTIONS

¶11. (C) Bafarawa criticized current INEC Chairperson Maurice Iwu as "not competent" to run any election in Nigeria. He cited, as an example, INEC's manipulation of previous elections in his state of Sokoto. Saraki took a different view, insisting that improving the quality of INEC as an institution mattered more than the quality of any person who headed the organization. He insisted that elections had started to improve recently. Even in the February 6 gubernatorial election in Anambra, he attributed the low number of voters as more of a problem with an inflated voter register than with the level of citizen participation.

LEADERSHIP IS KEY

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¶12. (C) Nnamani sided with Bafarawa, declaring that institutions consisted of human beings and that the behavior of their leaders affected the behavior of their employees. Many observers, he noted, had judged the 2007 national elections as the worst in Nigeria's history. INEC, Nnamani insisted, needed honest leadership. Not only did the Anambra election suffer from inflated voter registers, but voters could not find their names on the lists. Therefore, inaccurate registers caused many voters to become "disenfranchised." He noted that Supreme Court Justices in Nigeria had accorded progressively worse marks for the quality of national elections -- with 1999 deemed overall as "fairly okay," 2003 described by one justice as a "sham," and 2007 characterized as "fraudulent" by three of the seven Justices.

ELECTORAL REFORMS

¶13. (C) The Ambassador asked whether the INEC Chairperson could behave impartially if he or she must first be member of a political party, as pointed out recently by another Nigerian interlocutor (N.B.: former Chief Justice Muhammadu Lawal Uwais -- see reftel). Nnamani responded that the Government had removed one of the most important recommendations of the Electoral Reform Committee (ERC) by deleting its recommendation to provide for a more objective system of appointing the INEC Chairperson and Commissioners. He noted that the Chairperson would defend the ruling party if the President continued to appoint the Chairperson without input from

an objective third party, such as the National Judicial Council. He strongly advised immediate implementation of all ERC recommendations to prepare for the 2011 national elections.

¶14. (C) Saraki defended electoral reforms under consideration by the National Assembly, insisting that the Executive branch had only dropped a few substantive recommendations from those proposed by the ERC. He claimed that the National Assembly had even shown independence by already approving INEC's financial autonomy by giving it a first-line charge on the budget. He argued that this reform was more important than the one involving appointment of the INEC Chairperson and Commissioners. Nnamani interjected that this particular reform, while important, remained non-contentious and, therefore, easy for the National Assembly to support. Hitting closer to home, Nnamani also advocated another ERC recommendation that called for eliminating state electoral commissions, which he claimed Governors had manipulated to dictate selection of favored local government councilors.

WHAT NEXT ON THE CONSTITUTIONAL FRONT

¶15. (C) The three guests amply debated what would happen next in Nigeria. Former Governor Bafarawa, for example, noted that the country will need to decide how to address the issue of Jonathan being the sole executive. Former Senate President Nnamani commented that Acting President Jonathan may be able to transmit a letter to the Senate President to serve as the daily executive if he had to travel outside Nigeria. He continued that these were all issues that the current Constitution did not envision.

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COMMENT

¶16. (C) The wide-ranging discussions proved quite lively. Nnamani lived up to his well-earned reputation for independence, while Saraki generally towed the party line. All agreed that the National Assembly resolutions appointing Jonathan as Acting President, while imperfect, had advanced the political process by moving Nigeria towards appointment of the Constitutionally-designated successor, albeit via a mechanism not specifically delineated by the Constitution. They noted the need to "constitutionalize" the situation as soon as possible but agreed that the resolutions dampened down the country's political and stability concerns for the time being. Both Nnamani and Bafarawa emphasized the importance of leadership to provide INEC with the political will and power to run credible elections, while Saraki fell back on the oft-stated excuse that INEC personnel only lacked better capacity. END COMMENT.

¶17. (U) Assistant Secretary Carson departed from Abuja before this telegram was prepared.
SANDERS